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22 ATTORNEYS FOR SCOTTSDALE INSURANCE COMPANY

23 **UNITED STATES DISTRICT COURT**

24 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

25 Scottsdale Insurance Company,

26 Plaintiff,

27 vs.

28 Dickstein Shapiro LLP; Certain  
Underwriters at Lloyd's, London,  
including Brit UW Limited for and on  
behalf of Lloyd's Syndicate 2987,  
Beazley Furlonge Ltd. for and on behalf  
of Lloyd's Syndicate 2623, Beazley  
Furlonge Ltd. for and on behalf of  
Lloyd's Syndicate 0623, Faraday Capital  
Limited for and on behalf of Lloyd's  
Syndicate 0435, Amlin Underwriting  
Limited for and on behalf of Lloyd's  
Syndicate 2001, and RenaissanceRe  
Group for and on behalf of Lloyd's  
Syndicate 1458; Lexington Insurance  
Company; and Swiss Re International SE  
- Zurich,

Defendants.

Case No. 18-CV-02893-SVW-GJS

**DECLARATION OF BRYAN C.  
KEANE SUPPORT OF  
SCOTTSDALE INSURANCE  
COMPANY'S MOTION FOR  
RECONSIDATION**

Judge: Hon. Stephen V. Wilson

Hearing Date: May 13, 2019

Hearing Time: 1:30 p.m.

1  
2 I, Bryan C. Keane, hereby declare as follows:

3 1. I am an attorney at Dorsey & Whitney LLP and am admitted to appear  
4 in this matter *pro hac vice*. I am one of the attorneys for Plaintiff Scottsdale Insurance  
5 Company (“Scottsdale”) in the above-captioned action. I submit this Declaration in  
6 support of Scottsdale’s Motion for Reconsideration.

7 2. Scottsdale filed this suit against Defendants Certain Underwriters  
8 (including Lexington Insurance and Swiss Re) and Dickstein Shapiro (collectively,  
9 “Defendants”) on April 6, 2018, and filed its First Amended Complaint for  
10 Declaratory Relief (“FAC”) against Defendants on April 11, 2018.

11 3. By mutual agreement of the parties, the matter was not actively litigated  
12 until after the parties had an opportunity to discuss possible resolution in-person,  
13 which because of scheduling challenges did not occur until August 22, 2018.  
14 Pending the in-person meeting, the parties agreed that Certain Underwriters’ deadline  
15 to answer the FAC would be deferred, as would discovery, to avoid unnecessary cost  
16 and expense. The in-person meeting on August 22, 2018 did not lead to a resolution  
17 of the dispute.

18 4. When the matter failed to resolve at that meeting, Scottsdale  
19 immediately served its Requests for Production of Documents upon Certain  
20 Underwriters on August 24, 2018, requesting a response within 30 days pursuant to  
21 Federal Rules of Civil Procedure 26 and 34.

22 5. In exchange for Scottsdale’s agreement to further extend Certain  
23 Underwriters’ time to answer the FAC, Certain Underwriters’ prior counsel agreed  
24 that responses to the Scottsdale propounded discovery requests would be promptly  
25 forthcoming, with the production of documents commencing on a “rolling basis” by  
26 the formal response date of September 24, 2018. A true and correct copy of counsel’s  
27 email chain on these topics was previously filed at **Dkt. 136-1**.

1           6.       Certain Underwriters did not meaningfully begin to produce documents  
2 until October 22, 2018, however, and did not substantially complete their rolling  
3 production of documents until November 8, 2018, only days before a series of  
4 depositions were taken in London.

5           7.       On November 1, 2018, prior to Certain Underwriters' completion of its  
6 production of documents, Scottsdale gave notice of its intent to depose Mr. Hettrick's  
7 counsel in the underlying Manhattan Beachwear litigation, Attorney Andrew Waxler.

8           8.       Because of Mr. Waxler's scheduling demands, Scottsdale was unable to  
9 depose Mr. Waxler until November 20, 2018. At the deposition, Mr. Waxler testified  
10 that he received a copy of the *Manhattan Beachwear* complaint from a paralegal at  
11 Hettrick's office. A true and correct copy of excerpts from the deposition of Mr.  
12 Waxler was previously filed with Scottsdale's Opposition to Plaintiff's Motion for  
13 Summary Judgment, at **Dkt. 112-1**. True and correct copies of the subpoena duces  
14 tecum and the subpoena to testify at a deposition issued to Mr. Waxler on October  
15 26, 2018, are attached hereto as **Exhibit 1**.

16           9.       Before Mr. Waxler's deposition, Scottsdale had known only that the  
17 Complaint was filed on December 14, 2012, but not formally served until several  
18 months later.

19           10.      Immediately following the deposition of Mr. Waxler, Scottsdale  
20 identified the paralegal that Mr. Waxler referred to but could not identify during his  
21 deposition as Kirsten Aiello. Scottsdale immediately made efforts to contact Ms.  
22 Aiello. On November 26, 2018, Ms. Aiello responded to Scottsdale's counsel. A  
23 true and correct copy of the email sent by the paralegal to my colleague, Robert  
24 Cattanach, was previously filed at **Dkt. 136-6**.

25           11.      On November 28, 2018, Scottsdale issued a subpoena duces tecum to  
26 Ms. Aiello, seeking the production of documents supporting her disclosure. On  
27 December 10, 2018, Scottsdale issued a trial subpoena to Ms. Aiello. As Scottsdale  
28

1 was informed in communications with the process server, despite multiple attempts  
2 at serving Ms. Aiello, she evaded service and refused to open her home door.

3 12. On November 30, 2018, the Estate of Clyde Hettrick responded to a  
4 subpoena duces tecum served on it by Scottsdale, producing documents that  
5 confirmed Hettrick's receipt of the *Manhattan Beachwear* complaint prior to  
6 December 20, 2012. True and correct copies of the Estate of Clyde Hettrick's written  
7 responses and objections to the subpoena and documents produced are attached  
8 hereto as **Exhibit 2**.

9 13. On December 6, 2018, Scottsdale issued a trial subpoena to Mr. Waxler,  
10 a true and correct copy of which is attached hereto as **Exhibit 3**.

11 14. On November 21, 2018—the day after the deposition of Mr. Waxler—  
12 Scottsdale advised counsel for Certain Underwriters by email that it appeared there  
13 were facts supporting, if not establishing, that the Hettrick claim attached to the prior  
14 policy period (2011-2012). A true and correct copy of that email is attached hereto  
15 as **Exhibit 4**.

16  
17 I declare under penalty of perjury that the foregoing is true and correct.  
18

19  
20 April 15, 2019  
Date

21  
22 /s/Bryan C. Keane  
Bryan C. Keane  
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1 **CERTIFICATE OF SERVICE**

2

3 All Case Participants are registered for the USDC CM/ECF System

4 *Scottsdale Insurance Company v. Dickstein Shapiro LLP, et al.*  
5 *Central District of California Case Number 18-CV-02893-SVW-GJS*

6 **DECLARATION OF BRYAN KEANE IN SUPPORT OF SCOTTSDALE**  
7 **INSURANCE COMPANY'S MOTION FOR RECONSIDERATION**

8

9 I hereby certify that on April 15, 2019, I electronically filed the foregoing  
10 with the Clerk of the Court for the United States District Court for the Central  
11 District by using the CM/ECF system.

12 Participants in the case who are registered CM/ECF users will be served by the  
13 CM/ECF system.

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16 By: /s/Bryan C. Keane  
17 Bryan C. Keane

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